BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company For Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2013 through 2015.	)))))))	Case No. 12-2190-EL-POR Case No. 12-2191-EL-POR Case No. 12-2192-EL-POR

OBJECTIONS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

BRUCE J. WESTON
CONSUMERS' COUNSEL

Kyle L. Kern, Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: Kern (614) 466-9585
kern@occ.state.oh.us

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OBJECTIONS BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

The Office of the Ohio Consumers' Counsel ("OCC") submits these objections to the energy efficiency and peak demand reduction program portfolio plans ("EE/PDR Portfolio") filed by Ohio Edison Company ("OE"), The Cleveland Electric Illuminating Company ("CEI"), and The Toledo Edison Company ("TE") (collectively, "the Utilities" or "FirstEnergy") for 2013 through 2015. These objections are filed in compliance with Ohio Adm. Code 4901:1-39-04(D), which permits any person to file objections within sixty days[1] after the filing of an electric utility's program portfolio plan.

These cases are significant for residential customers because the Public Utilities Commission of Ohio's ("PUCO" or "Commission") will rule upon FirstEnergy's application for approval of certain energy efficiency programs, and will also determine how much money FirstEnergy's customers will be charged for these programs. The basis for these objections including proposed additions, alternative programs, or modifications to the FirstEnergy EE/PDR Portfolio are set forth below. OCC asserts that the lack of an

[1] The August 15, 2012 Entry filed by the Attorney Examiner for this proceeding requested that Objections be filed by September 17, 2012.

objection in this pleading to any aspect of the Utilities' EE/PDR Portfolio does not preclude OCC from cross-examination or introduction of evidence or argument of the issue at hearing or on brief.

I. BACKGROUND AND SUMMARY OF PORTFOLIO

In 2008, Am. Sub. S.B. 221 was enacted to establish statutory benchmarks for energy consumption and peak demand. R.C. 4928.66(A)(1)(a) required Electric Distribution Utilities ("EDUs"), beginning in 2009, to "implement energy efficiency programs that achieve energy savings equivalent to at least three-tenths of one percent of the total annual average, and normalized kilowatt-hour sales of the [EDU] during the preceding three calendar years to customers in this state." For the plan period, the savings requirement increases nine-tenths of one per cent in 2013, and one per cent in 2014 and 2015.[2] R.C.4928.66(A)(1)(b) required EDUs, starting in 2009, to "implement peak demand reduction programs designed to achieve a one per cent reduction in peak demand in 2009 and an additional seventy-five hundredths of one per cent reduction each year through 2018." Peak demand reduction programs generally encourage customers to limit their electricity consumption during high electric demand.

Ohio Admin. Code 4901:1-39-04 required electric utilities to propose their first comprehensive energy efficiency and peak-demand reduction program portfolio plan by January 1, 2010. FirstEnergy filed an application for its initial EE/PDR plans in Case Nos. 09-1947-EL-POR, 09-1948-EL-POR and 09-1949-EL-POR, for the period January 1, 2010, through December 31, 2012. The Commission approved the Utilities' initial

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[2] R.C. 48928.66(A)(1)(a).

EE/PDR plans on March 23, 2011.[3] EDUs were also required to file an updated program EE/PDR portfolio plan by April 15, 2013.[4] However, the PUCO's February 29, 2012 Entry in Case No. 12-814-EL-UNC allowed FirstEnergy to delay the filing of its proposed plans until July 31, 2012. Similar to the Utilities' existing portfolio plans, FirstEnergy's proposed plans include a portfolio of energy efficiency programs targeted to a variety of customer segments, including: Residential-Low Income; Residential-Other; Small Enterprise; Mercantile-Utility; and Governmental.[5]

According to the Utilities' EE/PDR Portfolio, by 2015, FirstEnergy is projected to save 5.2 percent of its electricity sales with a variety of programs for all customer classes.[6] In this regard, the Utilities are projected to save 658 MWs as a result of their EE/PDR Portfolio.[7] These estimations are comprised of the FirstEnergy's interruptible rates "ELR," direct load control programs, and coincident peak EE savings.[8]

The Utilities' Portfolio plan budget totals $248,929,790.[9] Of that total, residential programs make up $127,732,708, or 51 percent.[10] The projected net lifetime benefit (total benefits minus program costs) of the total portfolio is $235,081,166, yielding a total resource cost ("TRC") of 1.94.

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[3] See *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company For Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2010 through 2012 and Associated Cost Recovery Mechanisms*. Case Nos. 09-1947-EL-POR, et al., Opinion and Order, (March 23, 2011).

[4] Ohio Admin. Code 4901:1-39-04.

[5] *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company For Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2013 through 2015*, Case Nos. 12-2190-EL-POR, et al., Portfolio at 4 (July 31, 2012).

[6] Case No. 12-2190-EL-POR, Bradley D. Eberts Direct Testimony at Exhibit 1.

[7] Id.

[8] September 6, 2012, Technical Session for Case No. 12-2190-EL-POR.

[9] Case No. 12-2190-EL-POR, Edward C. Miller Direct Testimony, Exhibit ECM-3.

[10] Id.

FirstEnergy proposed an uncapped shared savings incentive mechanism of up to 13 percent.[11] An "uncapped" shared savings incentive means that FirstEnergy could potentially earn excessive profits if their annual electricity sales are greater than normal, as established in the last rate case, or, if their projected avoided costs were to increase substantially. And the Utilities requested annualized (rather than pro-rata) reporting of savings.[12] That means FirstEnergy could record a full year of savings for compliance purposes for programs launched in mid-year. Finally, FirstEnergy made a commitment to bid the EE and PDR resources in a risk averse way. FirstEnergy's "commitment" deprives customers of the full benefit they should receive from FirstEnergy, if the Utilities were to bid these resources fully into the PJM RPM capacity auctions and use the auction revenues to reduce program costs.[13]

II. OBJECTIONS

A. The Incentive Mechanism Should Have An Overall Cap Of No More Than Eight Percent Of Prudent Program Spending.

OCC objects to the Utilities' proposal to have an incentive mechanism without a cap on the amount of dollars FirstEnergy can collect. A hard cap protects consumers from paying for excessive profits, or other unintended negative consequences of a shared savings type mechanism. For example, an unexpected and unprecedented increase in avoided cost, or the introduction of a revolutionary technology may lead to excessive utility returns on their EE/PDR expenditures that could lead to customer backlash. To this

[11] Case No. 12-2190-EL-POR, Eren G. Demiray Direct Testimony at 10.

[12] Id. at 8.

[13] Portfolio at 12-13.

end, both of the incentive mechanisms contained in the PUCO Staff's Proposal for Incentivizing Utility Energy Efficiency Performance contained a hard cap.[14]

The shared savings incentive mechanism proposed by FirstEnergy allows the Utilities to collect up to a maximum of 13 percent of the avoided energy and capacity costs for savings (minus utility program costs) if they save 115 percent of the statutory benchmark.[15] If FirstEnergy does not meet the annual benchmark, it receives no incentive and is subject to a penalty.[16] But the proposed incentive levels are too high given the fact the Utilities are also collecting lost distribution revenues for the program, and especially given the Commission's reservations regarding the collection of lost distribution revenues in general.[17]

In this regard, two Commissioners have raised concerns with the recovery of lost distribution revenues. In the Opinion and Order in FirstEnergy's Energy Efficiency Portfolio Case, PUCO Chairman Snitchler stated in a concurring opinion that "I will be most reluctant to approve any future proposals which include the collection of lost distribution revenues resulting from the statutory mandates for energy efficiency savings and peak demand reduction."[18] That opinion was supported by Commissioner Roberto.[19] The Chairman's concern is that the collection of lost distribution revenues "presents a

[14] See *In the Matter of the Application of the [Companies] for Approval of Three Year Energy Efficiency and Peak Demand Reduction Plans and Initial Benchmark Report*, Case Nos. 09-1947-El-POR, 09-1948-ELPOR and 09-1949-EL-POR, Proposal For Incentivizing Utility Energy Efficiency Performance Submitted On Behalf Of The Staff Of The Public Utilities Commission Of Ohio (October 24, 2011) at 4-5.

[15] Demiray Direct Testimony at 10.

[16] R.C. 4928.66(C).

[17] See Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012) at 39, where the Commission found that "the lost distribution revenue collection provision in the Stipulation is the result of a reasonable compromise and should be adopted."

[18] Id., Concurring Opinion of Chairman Todd A. Snitchler at 2 (March 23, 2011).

[19] Id., citing Concurring Opinion of Commissioner Cheryl L. Roberto.

significant risk of undermining public support for the energy efficiency mandates, especially in light of the greater energy efficiency savings mandated by law in the future. We need to look no further than the unfortunate circumstances surrounding the failed original CFL program discussed in the Opinion and Order to see the risks of undermining public support for energy efficiency measures."[20]

Accordingly, the incentive mechanism should have at most an eight percent overall cap based on prudent management of energy efficiency program spending. The eight percent is within the range being offered to other utilities nationwide.[21]

B. The Laddered Incentive Percentages Proposed By The Utilities Should Be Reduced, Given FirstEnergy's Lucrative Arrangement For Collecting Lost Revenues From Customers That The PUCO Approved In The Settlement In The FirstEnergy Electric Security Plan III Proceeding (Case No. 12-1230-EL-SSO).

OCC objects to the incentive structure proposed by FirstEnergy Witness Demiray.[22] FirstEnergy proposes the following incentive structure:[23]

Incentive Tier	Compliance Percentage	Incentive Percentage
1	< 100%	0.0%
2	100-105%	5.0%
3	>105-110%	7.5%
4	> 110-115%	10.0%
5	> 115%	13.0%

[20] *Id.*, citing Concurring Opinion of Chairman Todd A. Snitchler at 1-2. In addition, the Commission has demonstrated an interest in the distribution lost revenue issue. On December 29, 2010, the Commission issued an entry in Case No. 10-3126-EL-UNC asking for public comments on whether Ohio's electric distribution utilities' rate structures should be modified to include lost revenue rate designs to better align utility performance with Ohio's desired public policy outcomes.

[21] See "Aligning Utility Incentives with Investment in Energy Efficiency," National Action Plan for Energy Efficiency, November 2007, pages 6-1through 6-2.

[22] Case No. 12-2190-El-POR, Demiray Direct Testimony, July 31, 2012.

[23] Id. See Demiray Direct at 10.

OCC recommends that the incentive percentages proposed by the Utilities should be reduced given FirstEnergy's lucrative arrangement for collecting its lost revenues from customers (as approved in the settlement of the FirstEnergy Electric Security Plan ("ESP") proceeding, Case No. 12-1230-EL-SSO (and in ESP I and II)). In this regard, Paragraph E.3 of the Stipulation in the FirstEnergy ESP III proceeding addresses Energy Efficiency and Peak Demand Reduction induced lost distribution revenues. Generally, lost distribution revenues are those revenues the Utilities do not collect from customers because of the customers are saving energy under the implementation of energy efficiency programs.

The Stipulation provides that:

> [D]uring the term of this ESP III, the Companies **shall be entitled to receive lost distribution revenue for all energy efficiency and peak demand reduction programs approved by the Commission**. Such lost distribution revenues do not include approved historical mercantile self-directed project[s]. The Signatory Parties agree that the collection of such lost distribution revenues by the Companies after May 31, 2016 is not addressed nor resolved by the terms of this Stipulation.[24] (Emphasis added).

The PUCO adopted the FirstEnergy ESP III Stipulation in its July 18, 2012, Opinion and Order. Customers pay for the costs of the energy efficiency and peak demand response programs. And, as a result of the Stipulation in the FirstEnergy ESP III proceeding, and the PUCO's subsequent adoption of that Stipulation, customers will be asked to pay for the Utilities' lost distribution revenues for an unknown amount and for an unknown number of years given the Stipulation language cited above. The Utilities'

[24] *In the Matter of Ohio Edison Company,) The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan* ("ESP III"), Case No. 12-1230-EL-SSO, Stipulation at 31 (April 13, 2012).

incentive tiers should therefore be reduced to reflect the open-ended nature of the collection of lost distribution revenues.

The incentive mechanism should not only have a eight percent overall cap based on prudent program spending as explained above, but the upper tier of shared savings should be lowered to eight percent of Adjusted Net Benefits. OCC recommends the incentive structure be modified as follows:

<u>OCC Proposed Incentive Structure</u>

Incentive Tier	Compliance Percentage	Incentive Percentage
1	< 100%	0.0%
2	>100-105%	2.0%
3	>105-110%	4.0%
4	> 110-115%	6.0%
5	> 115%	8.0%

C. FirstEnergy Should Only Receive An Incentive For Performance That Exceeds The Statutory Benchmarks.

OCC objects to the Utilities' proposal to receive shared savings for **meeting** the statutory benchmark.[25] Ohio is an energy efficiency compliance state, where electric utilities must meet an annual savings benchmark or be subject to penalties. In this regard, OCC recommends that incentives only be made available for actual utility performance that is demonstrated to have exceeded the statutory benchmarks. A utility should not be provided an incentive to comply with the law.

[25] Case No. 12-2190-EL-POR, Demiray Direct Testimony, at 5.

D. The Capacity Benefits In The First Year Of The Shared Savings Mechanism Should Be Discounted By The Peak Demand Savings That The Utilities Failed To Bid Into The PJM Base Residual Auction. Any Future Shared Savings Capacity Benefits Should Be Tied To The Amount Of Megawatt Savings The Utilities Bid Into The PJM Base Residual Auction.

There is an inherent problem for customers in FirstEnergy's approach. Customers are asked to pay for the program costs of the energy efficiency and peak demand response programs. Program costs are budgeted at $249 million dollars. To the extent these programs are successful in reducing the use of energy, customers are then asked to pay for the distribution revenues that the Utilities allegedly have lost for offering the programs. This arrangement is said to reward customers through the benefits of reduced demand for capacity where, when demand is reduced, theoretically there is a reduced cost of capacity that customers would pay, as a result of the energy efficiency or peak shaving brought about by these programs

That is the theory. But the theory appears not to be in practice for the FirstEnergy Utilities. The FirstEnergy Utilities bid only 36 MW of energy efficiency resources into the PJM 2015/16 Base Residual Auction ("BRA") auction on May 7, 2012.[26] This was below the 65 MW identified by the Utilities that could have been bid.[27] And in FirstEnergy's Portfolio plan, the Utilities estimated that by 2015, the plan will yield 658.3 MWs (or 460.3 MWs minus the large Mercantile projects).[28] A shared savings mechanism rewards a utility for capturing for its customers the value of avoided energy,

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[26] Case No. 12-1230-EL-SSO, Tr. Transcript ESP III, Vol. I, at 301 (Neme) (June 4, 2012).

[27] Case No. 12-1230-EL-SSO, ESP III Stipulation at 33 (April 13, 2012).

[28] Direct Testimony of Companies' Witness Miller, Exhibit ECM-2, pages 1-3.

capacity, and transmission and distribution ("T&D") savings from their energy efficiency and peak demand reduction programs.

To the extent that the Utilities failed to capture substantial capacity benefits for customers in the 2015/2016 PJM Base Residual Auction, bidding in a mere 36 MWs, an additional reduction in the calculated amount of the net avoided capacity benefit should be made. This adjustment would give customers some of their missing benefit.

E. FirstEnergy Should Bid All Of Its Saved Megawatts Into The PJM Base Residual Auction. Any Shortfalls Should Be Purchased In The Incremental Auctions And The Cost Of Those Purchases (And Any Associated Penalties) Should Be Deducted From The Base Residual Auction Revenue Stream Returned To Customers.

FirstEnergy should be required to bid all the saved megawatts projected in its Portfolio and approved by PJM (as spelled out in PJM Manual 18B[29]). The Utilities should secure the property rights of their programs' capacity savings and perform the necessary measurement and verification to assure PJM acceptance, in advance of the upcoming base residual auction. Any utility risks from this endeavor should be mitigated by purchasing any program capacity shortages from the PJM incremental auctions. The cost of those capacity purchases, any associated penalties (not due to imprudence), and any incremental measurement and verification costs should be deducted from the BRA revenue stream returned to customers.

The Commission supported the bidding in of all cost-effective energy efficiency and peak demand reductions into the PJM BRA in the Entry in Case No.12-814-EL-UNC

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[29] PJM Manual 18B: Energy Efficiency Measurement & Verification, March 1, 2010.

on February 29, 2012. The PUCO reiterated that support in its Opinion and Order in the Companies' ESP Order:[30]

> However, the Commission notes that additional steps may be taken to mitigate the impact of the transmission constraint in the ATSI zone for future base residual auctions. **Specifically, the Companies should take steps to amend their energy efficiency programs to ensure that customers, knowingly and as a condition of participation in the programs, tender ownership of the energy efficiency resources to the Companies. Further, the Companies should continue to take the necessary steps to verify the energy savings to qualify for participation in the base residual auctions, and the Companies should bid qualifying energy resources into the auction.** The record demonstrates that there has been tremendous growth in the use of energy efficiency resources in the capacity auctions, and the Companies are well positioned to substantially increase the amount of energy efficiency resources they can bid into the auction, which will assist in mitigating the impact of the transmission constraint in the ATSI zone. Further, the Commission will continue to review the Companies' participation in future base residual auctions until such time as the transmission constraint in the ATSI zone is resolved." (Emphasis added).

Similarly, in Commissioner Roberto's dissent in the FirstEnergy ESP III proceeding, she found that the information in the record was insufficient to find that the Companies "dedicated sufficient resources to reliability, particularly in the form of participation in the base residual auctions whose very purpose is reliability."[31] Under OCC's proposal, the Utilities are sheltered from any risk associated with over-bidding EE/PRD resources into the base residual auction. This approach should serve to maximize the benefit for the Utilities' customers from the downward pressure on capacity prices in the base residual auction by increasing capacity supplied through more aggressive bidding of the qualifying EE/PDR resources.

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[30] ESP III Opinion and Order, at 38.

[31] Id. at 5. (Roberto dissenting Opinion).

F. The PUCO Should Reject FirstEnergy's Proposal To Use The Utility Cost Test ("UTC") To Determine The Shared Savings Should. The Total Resource Cost ("TRC") Should Be Used Instead.

OCC objects to the Utilities' proposal to use the UTC test in determining the utility incentive.[32] The UTC is a benefit-cost test which measures the net costs of a program from the utility perspective and excludes any net costs incurred by the participant. However, the downfall of the UTC is that it only captures the benefits of the programs to the utility and not society as a whole. The UTC fails to take into account participant costs and therefore cannot be used to determine the complete benefit of the program.

The Total Resource Cost ("TRC") test is the only measure that accounts for all the costs and benefits of the utility programs. To this end, the TRC is a benefit-cost test which measures the net costs of a program based on the total costs of the program, including both the participants' and the utility's costs. Therefore, the utility incentives should come from the total net benefit the programs provide, not the net benefits provided only to the utility.

G. For Purposes Of Determining The Savings Used In The Shared Savings Calculation, No Savings Emanating From Self Direct Mercantile, Transmission And Distribution Projects, And Behavioral Programs Should Be Included.

OCC objects to FirstEnergy's inclusion of savings emanating from self-direct mercantile, transmission and distribution projects, and behavioral programs, in the shared savings calculation. A utility energy efficiency incentive mechanism should reward a utility for the savings the utility actively generates through the design and implementation

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[32] Direct Testimony of witness Demiray, pages 5-6.

of its programs. Savings from mercantile self-direct programs are generated by projects that the mercantile customer (not the Utilities) initiated and directed, and therefore should not be included in the Utilities' proposed incentive mechanism.

In addition, PUCO Staff has clearly stated that,

> [o]nly those programs that are under their direct or indirect supervision or management of the Company should be able to count toward those savings that exceed their annual benchmarks. This means that savings from efficiency measures or programs implemented by mercantile customers independent of the Company would not count toward a utility based incentive mechanism even though those savings could count toward their annual benchmarks.[33]

Savings from Transmission and Distribution ("T&D") projects[34] should not be included in the utility incentive mechanism. These types of projects are generally capitalized and receive a return on the utility's investment and therefore FirstEnergy should not be provided with an additional incentive through the proposed shared savings mechanism. Energy efficiency incentive mechanisms were set up precisely to provide EE/PDR program spending that is expensed with an opportunity for an incentive.

Behavioral program savings are difficult to measure, and it is not clear whether the behavioral program savings will persist over time as in the case of a hardware efficiency measure (like an air-conditioner or motor). Behavior-based programs focus on energy savings resulting from changes in individual customers or organizational behavior and decision-making, as compared to savings from deployment of hardware such as appliances, HVAC equipment and home insulation.

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[33] Case Nos. 09-1947-EL-POR, et al., Staff Proposal (October 24, 2011) at 1-2.

[34] R.C. 4928.66(A)(2)(d) permits a utility to include, for purposes of compliance with statutory EE&PDR benchmarks, "transmission and distribution infrastructure improvements that reduce line losses. FirstEnergy has developed the T&D Improvements program that accumulates the savings achieved through various energy efficiency T&D projects completed by the Utilities. These projects involve various system improvements. Portfolio at 62.

To this end, behavioral programs do not easily meet the PUCO Staff's recommendation that "Energy efficiency savings must be clearly and easily measurable."[35]

III. CONCLUSION

OCC submits these objections to FirstEnergy's EE/PDR Portfolio in accordance with Ohio Adm. Code 4901:1-39-04(D), which permits any person to file objections within sixty days[36] after the filing of an electric utility's program portfolio plan. OCC's proposals will maximize the benefits intended for customers under Ohio law and rule.

Respectfully submitted,

BRUCE J. WESTON
CONSUMERS' COUNSEL

/s/ Kyle L. Kern
Kyle L. Kern, Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: Kern (614) 466-9585
kern@occ.state.oh.us

[35] Id. at 2.

[36] The August 15, 2012 Entry filed by the Attorney Examiner for this proceeding requested that Objections be filed by September 17, 2012.

CERTIFICATE OF SERVICE

I hereby certify that a copy of these Objections was served on the persons stated below via electronic service this 17th day of September 2012.

*/s/ Kyle L. Kern*_____________________
Kyle L. Kern
Assistant Consumers' Counsel

SERVICE LIST

Devin.parram@puc.state.oh.us
kjkolich@firstenergycorp.com
cdunn@firstenergycorp.com
toddm@wamenergylaw.com
cmooney2@columbus.rr.com
Cathy@theOEC.org
Trent@theOEC.org
callwein@wamenergylaw.com
jvickers@elpc.org
rkelter@elpc.org
dboehm@BKLlawfirm.com
mkurtz@BKLlawfirm.com
jkyler@BKLlawfirm.com

ricks@ohanet.org
tobrien@bricker.com
tsiwo@bricker.com
gpoulos@enernoc.com
sam@mwncmh.com
fdarr@mwncmh.com
joliker@mwncmh.com
mpritchard@mwncmh.com
mlavanga@bbrslaw.com
NMcDaniel@elpc.org
robinson@citizenpower.com
mandy.willey@puc.state.oh.us
Gregory.price@puc.state.oh.us